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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/789,096

02/27/2004

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2004-310

7680

7590 04/19/2010
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EXAMINER

HINZE, LEO T

ART UNIT

PAPER NUMBER

2854

MAIL DATE

DELIVERY MODE

04/19/2010

PAPER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte NIRANJAN PATEL

Appeal 2009-002198
Application 10/789,096
Technology Center 2800

Decided: April 20, 2010

Before JOSEPH F. RUGGIERO, KARL D. EASTHOM, and
THOMAS S. HAHN, *Administrative Patent Judges*.

RUGGIERO, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134(a) from the Final Rejection of claims 1-18, which are all of the pending claims. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

Rather than reiterate the arguments of Appellant and the Examiner, reference is made to the Brief (filed November 29, 2007) and the Answer (mailed February 26, 2008) for the respective details. Only those arguments actually made by Appellant have been considered in this decision. Arguments which Appellant could have made but chose not to make in the Brief have not been considered and are deemed to be waived (*see* 37 C.F.R. § 41.37(c)(1)(vii) (2008)).

Appellant's Invention

Appellant's invention relates to a single day alarm clock including, *inter alia*, a single touch alarm activation and deactivation feature, a flashing light when the alarm is activated, a night light to indicate the alarm setting, and a visual alarm reset button to prevent the undesired activation of the alarm (*see generally* Spec. ¶¶ [0010]-[0015]).

Claim 1 is illustrative of the invention and reads as follows:

1. An apparatus, comprising an alarm-clock, wherein said alarm-clock has at least one button and at least one alarm, and wherein when said alarm is set said alarm button radiates light to provide a visual reminder that the alarm has been set.

The Examiner's Rejections

The Examiner relies on the following prior art references to show unpatentability:

Parissi	US 2,444,748	Jul. 6, 1948
Jones, Jr. (Jones)	US 5,402,396	Mar. 28, 1995

Claims 1-6, 8, and 9 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Jones.

Claim 7 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Jones.

Claims 10-18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Jones in view of Parissi.

ISSUES

The pivotal issues before us are whether the Examiner erred in determining that:

- a) Jones discloses an alarm clock with an alarm button that radiates light when the alarm is set; and
- b) if so, the obviousness to the ordinarily skilled artisan of combining the flashing alarm light feature of Parissi with Jones.

FINDINGS OF FACT

The record supports the following relevant findings of fact (FF) by a preponderance of the evidence:

1. Jones discloses (Fig. 1; col. 1, ll. 37-47) an alarm clock with a night light that illuminates the alarm ON/OFF button and the sleep button when the alarm button is set to the ON position.

2. Jones further discloses (col. 2, ll. 57-59) that the ON/OFF and sleep buttons 24, 26 can “be rendered translucent and for light produced by the night light be allowed to be transmitted therethrough.”

3. Jones also discloses (Fig. 2, col. 27-31) that the night light 28 includes two bulbs 40, 42 enclosed by a removable translucent cover.

4. The alarm clock 10 disclosed by Jones (Figs. 1-2) also includes an AM-FM radio, an AC current source 32, and an alarm button 24 that protrudes from the alarm clock housing.

5. Jones further discloses (Figs. 1-2; col. 2, ll. 35-39) that the alarm clock 10 has a digital display 12 and includes a dimmer switch 30 for controlling light radiating from the alarm clock.

6. Parissi discloses (Fig. 1; col. 1, ll. 4-6; col. 4, ll. 9-11) an alarm clock with a light 10 that flashes when an alarm is activated to alert hearing impaired users of the alarm activation.

PRINCIPLES OF LAW

1. ANTICIPATION

It is axiomatic that anticipation of a claim under § 102 can be found if the prior art reference discloses every element of the claim. *See In re King*, 801 F.2d 1324, 1326 (Fed. Cir. 1986); *Lindemann Maschinenfabrik GMBH v. Am. Hoist & Derrick Co.*, 730 F.2d 1452, 1457 (Fed. Cir. 1984).

In rejecting claims under 35 U.S.C. § 102, “[a] single prior art reference that discloses, either expressly or inherently, each limitation of a claim invalidates that claim by anticipation.” *Perricone v. Medicis Pharm. Corp.*, 432 F.3d 1368, 1375-76 (Fed. Cir. 2005) (citing *Minn. Mining & Mfg. Co. v. Johnson & Johnson Orthopaedics, Inc.*, 976 F.2d 1559, 1565

(Fed. Cir. 1992)). “Anticipation of a patent claim requires a finding that the claim at issue ‘reads on’ a prior art reference.” *Atlas Powder Co. v. IRECO, Inc.*, 190 F.3d 1342, 1346 (Fed. Cir. 1999) (“In other words, if granting patent protection on the disputed claim would allow the patentee to exclude the public from practicing the prior art, then that claim is anticipated, regardless of whether it also covers subject matter not in the prior art.”) (citations omitted).

2. OBVIOUSNESS

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. *See In re Fine*, 837 F.2d 1071, 1073 (Fed. Cir. 1988). In so doing, the Examiner must make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966). Furthermore,

“there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness” [H]owever, the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.

KSR Int’l Co. v. Teleflex Inc., 550 U.S. 398, 418 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)).

ANALYSIS

35 U.S.C. § 102(b) REJECTION

Independent claim 1

Appellant’s arguments focus on the contention that, in contrast to the invention set forth in independent claim 1, Jones does not disclose an alarm

clock wherein, when the alarm is set, the alarm button “activates at least one luminescent device” (App. Br. 10). According to Appellant (App. Br. 11-13), the alarm on/off button 24 in Jones has no light when set or activated but, rather, the light comes from a night light 28 which may or may not be activated.

We do not agree with Appellant’s arguments as they are not commensurate with the scope of the language of independent claim 1 before us on appeal. Contrary to Appellant’s contention, claim 1 does not require that the alarm button activate a luminescent device but, instead, only that the alarm button “radiates light.”¹ We agree with the Examiner (Ans. 4, 10, 11) that Jones’s disclosure (FF 1-2) of translucent alarm buttons 24, 26 which allow light produced by night light 28 to be transmitted through the buttons satisfies the claimed “button radiates light” feature.

Further, Appellant’s arguments alleging that Jones teaches away from the claimed invention (App. Br. 22) are irrelevant to the Examiner’s anticipation rejection. *See Leggett & Platt, Inc. v. VUTEk, Inc.*, 537 F.3d 1349, 1356 (Fed. Cir. 2008) (noting that teaching away is irrelevant to anticipation) (citation omitted).

¹ The “activates at least one luminescent device” language appears in amended versions of independent claims 1 and 10 presented in an amendment after the Final Office Action of September 22, 2006. This amendment was not entered by the Examiner (Advisory Action of December 20, 2006) and, accordingly, the versions of claims 1 and 10 containing the argued language are not before us on Appeal. Further, as pointed out by the Examiner (Ans. 15), issues regarding whether the Examiner improperly failed to enter an amendment related to petitionable subject matter under 37 C.F.R. § 1.181 are not appealable subject matter. *See* Manual of Patent Examining Procedure (MPEP) §§ 1002, 1201.

In view of the above discussion, since we find that the Examiner did not err in finding that Jones discloses all of the claimed limitations, the Examiner's 35 U.S.C. § 102(b) rejection of independent claim 1 is sustained.

Dependent claims 2 and 3

The Examiner's anticipation rejection of dependent claims 2 and 3 is also sustained. We find no error in the Examiner's finding (Ans. 4, 5, 12) that, as required by the claims, Jones discloses (FF 3) that the luminescent night light 28, which is "associated with" the translucent material alarm button 24, includes light bulbs 40, 42.

Dependent claims 4-6

We also sustain the Examiner's anticipation rejection of dependent claims 4-6. We find no error in the Examiner's finding (Ans. 5, 12) that, as claimed, Jones discloses (FF 4) an AM-FM radio (Fig. 1, element 14) associated with an alternating current operated alarm clock 10 (Fig. 2, AC source 32), which has an alarm button 24 which protrudes from the alarm clock housing.

Dependent claims 8 and 9

The Examiner's anticipation rejection of dependent claims 8 and 9 is sustained as well. We agree with the Examiner (Ans. 5, 6, 13) that Jones discloses (FF 5) that alarm clock 10 has a digital display and further includes a dimmer switch 30 for controlling light radiating from the alarm clock as claimed.

35 U.S.C. § 103(a) REJECTIONS

Dependent claim 7

The Examiner's obviousness rejection of dependent claim 7 based on the teachings of Jones is sustained as well. We find no error in the Examiner's determination (Ans. 6, 7, 13) that an ordinarily skilled artisan would have recognized and appreciated that in the United States standard household current is between 120 and 240 volts. Appellant's arguments (App. Br. 18) rely on the arguments asserted previously against independent claim 1, which arguments we have found to be unpersuasive for all of the previously discussed reasons.

Claims 10-18

We also sustain the Examiner's obviousness rejection, based on the combination of Jones and Parissi, of claims 10-18. Appellant's arguments (App. Br. 22-23) focus on the contention that Parissi teaches away from the claimed invention. We agree with the Examiner's articulated line of reasoning (Ans. 7, 14), however, that Parissi's teaching (FF 6) that a light that flashes when an alarm is activated to alert hearing impaired users of the alarm activation would have served as an obvious enhancement to the lighted alarm button feature of the alarm clock device of Jones.

Further, as with Appellant's arguments with respect to independent claim 1, we find that Appellant's arguments that Jones has no disclosure of an alarm button that "activates at least one luminescent device" are not commensurate with the scope of independent claim 10 since this feature is not included in claim 10 that is before us on appeal.

CONCLUSION

Based on the findings of facts and analysis above, we conclude that the Examiner did not err in rejecting claims 1-6, 8, and 9 for anticipation under 35 U.S.C. § 102(b), nor in rejecting claims 7 and 10-18 for obviousness under 35 U.S.C. § 103(a).

DECISION

The Examiner's decision rejecting claims 1-6, 8, and 9 under 35 U.S.C. § 102(b) and claims 7 and 10-18 under 35 U.S.C. § 103(a) is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2007).

AFFIRMED

babc

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